

HENRY STAGNARO

IBLA 77-170

Decided July 25, 1977

Appeal from decision of California State Office, Bureau of Land Management, declaring mining claims void ab initio.

Affirmed in part, reversed in part.

1. Act of June 25, 1910--Act of June 10, 1920--Act of August 11, 1955--Mining Claims Rights Restoration Act --Mining Claims: Power Site--Mining Claims: Withdrawn Lands--Power Site Lands--Withdrawals and Reservations: Power Sites

Where prior to 1920 a power site withdrawal was created by executive order under authority of the Act of June 25, 1910, the withdrawn land remained open to the location of mining claims for metalliferous minerals until passage of the Federal Power Act on June 10, 1920, which closed power sites to all entry, location or disposal. Any mining claim located thereafter on power site lands is void ab initio unless the land has been restored to such entry in accordance with section 24 of the Federal Power Act or the location of the claim has been made in accordance with the Act of August 11, 1955, 30 U.S.C. § 621 (1970). The latter Act did not operate retroactively to validate void claims.

2. Act of June 10, 1920--Mining Claims: Withdrawn Lands--Withdrawals and Reservations: Effect of

Land reserved for a reservoir site by executive order under authority of the

Pickett Act of June 25, 1910, to conserve water for irrigation purposes, remained open to the location of mining claims for metalliferous minerals, and the provisions of the Federal Power Act of June 10, 1920, would not operate to bar the location of such claims unless and until a power site classification was subsequently imposed.

APPEARANCES: John Stovall, Esq., of Neumiller & Beardslee, Stockton, California, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE STUEBING

This appeal is from a decision of the California State Office, Bureau of Land Management (BLM), dated January 10, 1977, which held that appellant's mining claims were null and void. Six unpatented mining claims were involved in the Bureau's decision. Five of these are placer claims and the sixth is a quartz lode claim, identified as the Steiver Morehouse Quartz claim. The appellant concedes that the lode claim is null and void and does not appeal that portion of the decision relating thereto. The five placer claims at issue are located on lands withdrawn by executive order for either Power Site Reserve No. 86 or Reservoir Site Reserve No. 17.

[1] The placer mining claims were located between the years 1925 and 1932. All of the claims in this action were located for the purpose of mining metalliferous minerals, especially gold. In declaring the claims null and void, the BLM held that the land in question was withdrawn pursuant to executive orders dated July 2, 1910, and June 8, 1926, and reserved for Power Site No. 86 and Reservoir Site No. 17. The BLM decision states that the executive orders were issued pursuant to the Act of June 25, 1910, 43 U.S.C. § 141 et seq. (1970), (the "Pickett Act."). No other authority is given in the BLM decision, although a "memo for file" regarding a telephone call between the State Office and the appellant's attorney refers to a "1920 act" as further reason why the appellant's claims were denied. Specifically, the reference is to the Federal Power Act of June 10, 1920, 16 U.S.C. § 791 et seq. (1970), and particularly, 16 U.S.C. § 818.

The appellant argues that the lands withdrawn under authority of the 1910 Act as amended (43 U.S.C. § 142) are not withdrawn from entry and location where the minerals involved are metalliferous. The Act provides in part that:

All lands withdrawn under the provisions of this section and section 141 of this title shall at all times be

open to exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same apply to metalliferous minerals \* \* \*.

The position implied but not stated in the BLM decision is that by virtue of the Federal Power Act of 1920, mining locations (metalliferous or otherwise) made on power site lands after 1920 and prior to 1955 (the date of the Mining Claims Restoration Act, 30 U.S.C. §§ 621-25) were null and void. The portion of the 1920 Act upon which BLM relies is section 24 (16 U.S.C. § 818) and reads in part:

Any lands of the United States included in any proposed project under the provisions of this subchapter shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress. Notice that such application has been made, together with the date of filing thereof and a description of the lands of the United States affected thereby, shall be filed in the local land office for the district in which such lands are located. Whenever the Commission shall determine that the value of any lands of the United States so applied for, or heretofore or hereafter reserved or classified as power sites, will not be injured or destroyed for the purposes of power development by location, entry, or selection under the public land laws, the Secretary of the Interior, upon notice of such determination, shall declare such lands open to location, entry, or selection, for such purpose or purposes and under such restrictions as the Commission may determine, \* \* \*. [Emphasis added.]

The main thrust of appellant's argument is that "[t]he plain language of 16 U.S.C. 818 does not show any intent to automatically and retroactively broaden earlier withdrawals under 43 U.S.C. 141," (Brief for Appellant at 10) and that "Power Site Reserve 86 cannot be for any proposed project under the provisions of a subchapter which was not created until ten years after the reserve site was created." *Id.* at 12. Appellant further contends the BLM decision conflicts with the intent of the Federal Power Act by attenuating or removing the power of the Federal Power Commission to properly regulate proposed projects.

This contention was disposed of soon after the passage of the 1920 Act. The Act of 1910 did not preclude the location of mining claims for metalliferous minerals on lands withdrawn pursuant to its authority. The Act of 1920 without reference to the Act of 1910

requires the Federal Power Commission to make a determination that the value of the land "will not be injured or destroyed for the purposes of power development by location, entry, or selection under the public land laws \* \* \*." 16 U.S.C. § 818. The interrelation of these acts was soon clarified by the Department of the Interior. This was accomplished in Instructions, dated November 20, 1920, Circular No. 729 (47 L.D. 595), which provided that:

[W]hile the act of June 25, 1910 (36 Stat. 847), allows metalliferous mineral explorations and applications based thereon, the act of June 10, 1920, makes no exceptions.

Therefore, in [the] future, any mineral application or location, based upon discoveries made subsequent to June 10, 1920, which is in conflict with lands reserved or classified as power sites, should be rejected by you, subject to appeal. [Emphasis in original.]

A central issue raised in the instant appeal was considered in Coeur D'Alene Crescent Mining Company, 53 L.D. 531, 537 (1931). In that case a lode claim located in 1921 was on land included in a temporary power site and withdrawn by executive order pursuant to the Act of 1910. The Department held that:

[T]he determination of the Federal Power Commission that the value of the land "will not be injured or destroyed for the purposes of power development by location, entry, or selection under the public-land laws," is a necessary prerequisite to the exercise of authority by the Secretary, declaring such lands open to such forms of disposition with the reservations provided in section 24. In this respect the Federal Water Power Act is inconsistent with the act of June 25, 1910, as amended, which left open without restriction in withdrawals made thereunder, the appropriation of the land under the mining laws so far as the same applied to metalliferous minerals, and to the extent of such inconsistency by section 24 of the former, the latter is repealed.

The Department then cited the Instructions (47 L.D. 595), quoted hereinabove, and held that the claim was void.

In similar cases, this Board has consistently held that mining claims located on land withdrawn from mineral entry are null and void ab initio. See, e.g., Mickey G. Shaulis, 11 IBLA 209 (1973); T. E. Markham, 24 IBLA 5 (1976).

Appellant contends that the BLM decision conflicts with the Federal Power Act to the extent that it vitiates the regulatory responsibilities of the Commission as designated by the Act. We disagree. Whatever conflicts that exist must be resolved in favor of the requirements contained in 16 U.S.C. § 818. Even where the President's executive order withdraws land temporarily, the provisions of the 1910 Act which allowed the location of metalliferous claims (43 U.S.C. § 142) must be read *in pari materia* with section 24 of the Federal Power Act, which sets forth those prerequisites to the opening of lands for location. We find, therefore, that the provisions of the Act of 1910 which authorized the continued location of claims for metalliferous minerals on lands temporarily withdrawn thereunder for water power purposes was repealed by the Federal Power Act. The repealing effect of subsequent acts on prior legislation is well established:

[I]t is only natural that subsequent enactments should be declaratory of the intent to repeal preexisting laws without mention or reference to such prior laws, or repeal may arise by necessary implication from the enactment of a subsequent Act.

A. Sutherland, 1A Statutory Construction § 23.09 (4th ed. 1972).

In view of the foregoing, we hold that those claims on Power Site 86, *i.e.*, McCrary's Dream, the south part of the Retriever (Aka Spillover), Reliever, and Morehouse, are void ab initio.

[2] Appellant contends that even if those claims located on Power Site 86 are void, the claims located on Reservoir Site Reserve No. 17 remain valid, because they are located on land withdrawn for purposes other than the development of power.

Reservoir Site Reserve No. 17 which includes the land on which the north one-half of the Retriever (Aka Spillover) placer claim and the entire Golden Trail Placer mining claim are located, was withdrawn pursuant to the 1910 Pickett Act and thus was open to the location of claims for metalliferous minerals. The August 15, 1926, letter of the Director, Geological Survey, endorsed by the Secretary of the Interior, which transmitted the proposed Executive order to the President for signature, states that the purpose of the reservoir site was to conserve water for irrigation after it had been used for power. It was not withdrawn for power purposes, and thus the Federal Power Act did not close it to the location of mining claims for metalliferous minerals. In 1933 the land was classified as a power site by Power Site Classification No. 267, but the Golden Trail Placer claim was located prior thereto, on June 9, 1932. Therefore, that claim was not void as a matter of

law when located. Likewise, the Retriever placer claim was located in 1926, and to the extent that it was located within Reservoir Site No. 17, it was not void ab initio.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as to claims located on Power Site 86, and reversed as to the Golden Trail Placer claim and that part of the Retriever claim which is located on Reservoir Site Reserve No. 17.

Edward W. Stuebing

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Administrative Judge

We concur:

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Newton Frishberg  
Chief Administrative Judge

Martin Ritvo  
Administrative Judge

